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Attorneys for Claimant
THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:
PG&E CORPORATION
and
PACIFIC GAS AND ELECTRIC COMPANY
Debtor(s).

Case No. 19-30088 (DM)
(Lead Case)

Chapter 11
(Jointly Administered)

**RESPONSE BY CLAIMANT THE
REGENTS OF THE UNIVERSITY OF
CALIFORNIA TO REORGANIZED
DEBTORS' FORTY-FOURTH OMNIBUS
OBJECTION TO CLAIMS [DN 9464]**

[re: Claim No. 61276]

Hearing:

Date: October 19, 2021
Time: 10:00 a.m. PT
Place: (Telephonic or Video Only)
United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102
Judge: Honorable Dennis Montali

Affects PG&E Corporation
 Affects Pacific Gas and Electric Company
 Affects Both Debtors

*All papers shall be filed in the Lead Case, No.
19-30088 (DM).*

1 The Regents of The University of California, on behalf of the University of California, San
2 Francisco (“Claimant” or “UCSF”), by and through its undersigned counsel, Rimon P.C., hereby
3 responds (the “Response”) to the *Reorganized Debtors’ Forty-Fourth Omnibus Objection To*
4 *Claims (No Liability / Passthrough Claims)* [DN 9464] (the “Objection”) filed by the Reorganized
5 Debtors (or “PG&E”) with regard to Claim No. 61276 (the “Claim”), and respectfully represents, as
6 follows:

7 **I. INTRODUCTION.**

8 1. UCSF constructed a new home for its eye care services at 490 Illinois Street as part
9 of its Mission Bay Campus, which opened its doors in November 2020 with more than 40,000
10 square feet of clinic space and nearly double the then-existing number of exam rooms. Of course,
11 the new building needed electricity and gas, among other utilities, so UCSF had been in
12 communications with PG&E for months before and during the construction of the new building so
13 PG&E could determine when it would finish the infrastructure needed to supply permanent power
14 to the building. PG&E planned to build the infrastructure and connect the permanent power via a
15 pathway on Illinois Street, which is adjacent to the new building.

16 2. However, after the building construction was well underway, PG&E notified UCSF
17 that the Illinois Street power pathway was no longer available and that new infrastructure for
18 UCSF’s permanent power pathway had to be built from a different, more distant, and obstacle-laden
19 source across 3rd Street. UCSF is informed and believes that PG&E changed its plans and diverted
20 its delivery of power to the UCSF building from the Illinois Street pathway so it could use that
21 source to deliver power to the new Warriors stadium across the street. Regardless, the source for
22 UCSF’s power was farther away, moved mid-way thru construction, delivered at a later date, and
23 cost substantially more. As a result – and despite more than sufficient meetings and notifications
24 from UCSF and Webcor, UCSF’s general contractor – PG&E’s delays, lack of timely notice of its
25 changed plans to deliver power to UCSF’s new building, and a later power outage caused the
26 construction of the building to be delayed by about 86 workdays (or about 126 calendar days), at a
27 cost of over \$4.5 million to UCSF.

1 3. Despite providing this factual information and supporting documentation to PG&E's
2 counsel over six months ago, PG&E has not responded to the substance of the Claim, and instead,
3 contends that PG&E is *never* liable under Electric Rule 14. This contention, however, is contrary to
4 law, as set forth in detail below.

5 4. Based on the supporting factual background and legal authorities below, UCSF
6 respectfully requests that the Court overrule the Objection. In the alternative, UCSF respectfully
7 requests that the Court proceed with the hearing on the Response and Objection as a status
8 conference and allow sufficient time after the initial status conference hearing for Claimant to
9 conduct focused discovery, including at least document requests and depositions for additional
10 evidentiary support for its Claim.

11 **II. FACTUAL BACKGROUND.¹**

12 5. In or around 2016, the University of California, San Francisco, which is part of the
13 state university system owned and operated by Claimant pursuant to Article IX, Section 9 of the
14 California Constitution, engaged in the construction of UCSF's Wayne and Gladys Valley Center
15 for Vision, which is sometimes referred to as the "Block 33 Project." Now substantially completed,
16 the Block 33 Project houses new ophthalmology clinics, as well as teaching, research, conference,
17 and administrative space for various UCSF units previously located at multiple sites.² The building
18 consists of three wings: a twelve-story tower; a five-story south wing; and a three-story north wing
19 with a rooftop garden. The Block 33 Project is in Mission Bay, is located on the corner of 3rd and
20 16th Streets, and is bounded by 3rd Street on the West, 16th Street on the North, Illinois Street on
21 the East, and Mariposa Street on the South. *See* McGee Dec., ¶ 5.

22 6. In the simplest terms, in 2016, UCSF contracted with Webcor to construct the Block
23 33 Project. Webcor's schedule to construct the new building relied on a specific time frame for
24 permanent power to be supplied by PG&E. PG&E provided assurances and promises to provide
25

26 ¹ UCSF has not completed its investigation into this matter and reserves the right to update or
27 amend these supporting facts as its investigation continues.

28 ² *See* Declaration of Patrick McGee In Support Of Response By Claimant The Regents Of The
University Of California To Reorganized Debtors' Forty-Fourth Omnibus Objection To Claims
[DN 9464] [re: Claim No. 61276] ("McGee Dec."), ¶¶1, 5.

1 permanent power to the Block 33 Project by a particular date. The Webcor costs and the sequence
2 of trades to construct the building were based on those PG&E timelines. *See* McGee Dec., ¶ 6.

3 7. About two years into the Block 33 Project, PG&E informed UCSF that its source of
4 power for the project was no longer available, and that PG&E needed to bring in another source of
5 power from across the city, causing significant delays. It appears the power originally allocated to
6 UCSF was diverted by PG&E to the Golden State Warriors' Chase Center. *See* McGee Dec., ¶ 7.
7 Specifically, in August 2018, UCSF had a meeting with PG&E's third project manager.³ *See*
8 McGee Dec., ¶ 8 at Ex. 1. In that meeting, PG&E informed UCSF for the first time that PG&E's
9 permanent power distribution along Illinois Street would be re-routed due to PG&E's own designs
10 and decisions and that PG&E therefore lacked the capacity to provide power to serve the Block 33
11 Project down Illinois Street as originally planned and promised. *See* McGee Dec., ¶ 8 at Ex. 1.
12 Instead, PG&E identified an alternate service location in the area along 3rd Street on the opposite
13 side of the street and across the Muni tracks, which had not yet been constructed. *See* McGee Dec.,
14 ¶ 8 at Ex. 1. PG&E's change in plans required that the permanent power pathway must cross 3rd
15 Street, beneath the Muni tracks, run down 16th Street and then onto Illinois Street before power
16 could be connected to the permanent power point of connection for the Block 33 Project. *See*
17 McGee Dec., ¶ 8 at Ex. 1. As a result of PG&E's change in plans, and in addition to the delay
18 caused by this change, UCSF was forced to create an entirely new permanent power design coupled
19 with a relocation requirement, and also required additional work regarding new UCSF-PG&E
20 easement agreements and pathway construction issues. *See* McGee Dec., ¶ 8 at Ex. 1.

21 8. At the time of the original baseline schedule for the Block 33 Project, the work was
22 forecasted to complete much earlier than the date PG&E actually provided permanent power
23 service. *See* McGee Dec., ¶ 8 at Ex. 1. However, for multiple months, as permanent power
24 continued to be impacted and delayed by PG&E, UCSF and its contractor Webcor were required to
25 re-sequence construction activities down stream of power to alleviate project delay impacts. *See*
26 McGee Dec., ¶ 8 at Ex. 1. Webcor made it clear that the permanent power date could not slip past

27 28 ³ PG&E had five different project managers for the Block 33 Project, each of whom was replaced
over time by PG&E for lack of responsiveness or unresponsiveness to UCSF.

1 the deadline established in the master schedule without causing delay to the entire project. The
2 Block 33 Project was further impacted in completing the main electrical room. *See McGee Dec., ¶*
3 8 at Ex. 1.

4 9. An additional factor impacting the availability of permanent power was the delay in
5 PG&E crews completing permanent power pathways across 3rd Street, which would allow PG&E
6 to pull and terminate service to the Block 33 Project switchgear. *See McGee Dec., ¶ 8 at Ex. 1.*
7 This pathway was rescheduled by PG&E three times since early May 2019 and was finally
8 forecasted to be completed June 19, 2019 through June 21, 2019. *See McGee Dec., ¶ 8 at Ex. 1.*
9 Ultimately, PG&E provided permanent power service in or around July of 2019, which was a delay
10 of 86 workdays or over four months. *See McGee Dec., ¶ 9 at Ex. 2.*

11 10. The absence of permanent power impacted all equipment startup and commissioning
12 activities for the Block 33 Project, impacted the ability to remove the temporary power necessary to
13 allow completion of rough-in and finishes construction work, and further impacted the ability of
14 UCSF and Webcor to start finish work that required conditioned space (e.g., Level 1 Lobby,
15 Auditorium wall wood paneling, reception desk, and stair treads). *See McGee Dec., ¶ 8 at Ex. 1.*
16 As the impact continued, the given power pathways and completion of PG&E controlled cable pulls
17 remained unknown, and Webcor and the design build team mitigated portions of the PG&E impact
18 with select acceleration and resequencing strategies. *See McGee Dec., ¶ 8 at Ex. 1.*

19 11. PG&E created other and further delays to the Block 33 Project by failing to approve
20 the gas design submission and requesting additional letters be provided from UCSF and its architect
21 to confirm the gas meter room met all applicable codes and green book regulations. *See McGee*
22 *Dec., ¶ 8 at Ex. 1.* This impacted the Project's ability to commence boiler work and installation of
23 finishes that needed to be installed in conditioned space. *See McGee Dec., ¶ 8 at Ex. 1.* Finished
24 wood products are sensitive to fluctuations in temperature and humidity, and as such the
25 commissioning exhibits and project specifications required functioning mechanical systems before
26 beginning lobby finishes. *See McGee Dec., ¶ 8 at Ex. 1.* Due to incomplete utility connections, the
27 full impact to wood finishes is unknown. UCSF contractors Otis elevators, CEI and Webcor
28 drywall group worked to receive a temporary variance to operate cars A/B from the state elevator

1 inspector on May 31, 2019. *See* McGee Dec., ¶ 8 at Ex. 1.

2 12. Last, on or about October 8, 2019, there was a PG&E permanent power outage,
3 which caused a further schedule delay and additional costs for subcontractors related to “show-up”
4 time. *See* McGee Dec., ¶ 9 at Ex. 3.

5 13. UCSF and Webcor took all reasonable steps to minimize or mitigate the impacts to
6 the schedule and ongoing work caused by the PG&E permanent power delays. *See* McGee Dec., ¶
7 8 at Ex. 1.

8 14. The Reorganized Debtors caused permanent power and other delays to the Block 33
9 Project and failed to exercise reasonable diligence and care to meet their commitments and
10 obligations to provide timely permanent power pathways and service to the Block 33 Project. *See*
11 McGee Dec., ¶ 8.

12 15. As a result of the Reorganized Debtors’ failure to exercise reasonable diligence and
13 care to furnish and deliver a permanent, continuous and sufficient supply of electric energy to the
14 Block 33 Project, Claimant suffered damages in the total amount of \$4,555,288, consisting of two
15 parts:

16 a. \$4,538,754, in damages due to PG&E’s failure to meet its commitments and
17 obligations for timely permanent pathways and service to the Block 33 Project. *See*
18 McGee Dec., ¶ 9 and Ex. 2 (Webcor’s Change Order 92 with supporting
19 documentation); and

20 b. \$16,534, in damages due to a loss of power while UCSF was still completing
21 work on the Block 33 Project. *See* McGee Dec., ¶ 9 and Ex. 3 (Webcor’s Change Order
22 95 with supporting documentation).

23 16. UCSF filed its Claim on a timely basis. On November 5, 2020, PG&E filed its
24 Objection to UCSF’s Claim. Beginning on December 17, 2020, UCSF made numerous attempts to
25 meet and confer on the substance of UCSF’s Claim with PG&E, through counsel.

26 17. In particular, on March 9, 2021, UCSF contacted the Reorganized Debtors, through
27 counsel, with an e-mail message providing a factual summary of the Claim as well as copies of
28 Change Order 92, Change Order 95, and a narrative providing additional factual background of

1 PG&E's delays and the damages caused by its delays, all of which supported UCSF's damages of
2 over \$4.5 million.

3 18. On September 9, 2021, UCSF was contacted by PG&E, through counsel, with regard
4 to UCSF's Claim. UCSF attempted again to discuss a further continuance to allow time for the
5 parties to discuss the substance of the Claim in order to avoid the unnecessary expense of litigation,
6 and provided another copy of the Change Orders and factual background of the Claim to outside
7 counsel for PG&E.

8 19. Regardless of these attempts to meet and confer in good faith, the Reorganized
9 Debtors continue to object to the Claim as a No Liability Claim (DN 9464), and have not responded
10 to UCSF on the factual substance of the Claim.

11 20. On September 25, 2020, the Court entered its *Order Approving ADR And Related*
12 *Procedures For Resolving General Claims* (DN 9148) (the “ADR Order”). With regard to the
13 Claim, the Reorganized Debtors have not initiated the General Claims Information Procedures
14 under the ADR Order and have not served an Information Request Form to the Claimant. The
15 Reorganized Debtors have similarly not engaged in any of the General ADR Procedures pursuant to
16 the ADR Order with regard to the Claim.

17 21. PG&E postponed the hearing on the Objection multiple times because it was delayed
18 in reviewing the Claim and its supporting materials. This Response follows.

19 **III. PG&E HAS SIGNIFICANT LIABILITY TO UCSF UNDER CLAIM 61276.**

20 A. **The Reorganized Debtors Have A Duty To Exercise Reasonable Diligence And**
21 **Care To Furnish And Deliver Continuous And Sufficient Supply Of Electric**
22 **Energy To UCSF's Block 33 Project.**

23 22. PG&E must exercise reasonable care under Pacific Gas and Electric Company Tariff
24 Electric Rule 14 (“Rule 14”), which provides in pertinent part:

25 PG&E will exercise reasonable diligence and care to furnish and deliver a continuous
26 and sufficient supply of electric energy to the customer, but does not guarantee
27 continuity or sufficiency of supply. PG&E will not be liable for interruption or
28 shortage or insufficiency of supply, or any loss or damage of any kind of character
29 occasioned thereby, if same is caused by inevitable accident, act of God, fire, strikes,
30 riots, war, or any other cause except that arising from its failure to exercise reasonable
31 diligence.”

1 23. If PG&E fails to comply with Rule 14, then it can be held liable for all loss,
2 damages, or injury resulting from its failure. *See* Pub. Util. Code § 702 (“Every public utility shall
3 obey and comply with every order, decision, direction, or rule made or prescribed by the
4 commission in the matters specified in this part, or any other matter in any way relating to or
5 affecting its business as a public utility, and shall do everything necessary or proper to secure
6 compliance therewith by all of its officers, agents, and employees.”)

7 24. Section 2106 of the Public Utilities Code states in relevant part:

8 Any public utility which does, causes to be done, or permits any act, matter, or thing
9 prohibited or declared unlawful, or which omits to do any act, matter, or thing required
10 to be done, either by the Constitution, any law of this State, or any order or decision
11 of the commission, shall be liable to the persons or corporations affected thereby for
12 all loss, damages, or injury caused thereby or resulting therefrom. If the court finds
that the act or omission was wilful, it may, in addition to the actual damages, award
exemplary damages. An action to recover for such loss, damage, or injury may be
brought in any court of competent jurisdiction by any corporation or person.

13 25. Public Utilities Code § 451 provides that “[e]very public utility shall furnish and
14 maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and
15 facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons,
16 employees, and the public.”

17 26. “By undertaking to supply electricity to [a customer], [PG&E] obligated itself to
18 exercise reasonable care toward him, and failure to exercise such care has the characteristics of both
19 a breach of contract and a tort.” *Langley v. Pacific Gas & Elec. Co.*, 41 Cal. 2d 655, 662 (1953)
20 (holding PG&E liable for damages for failure to exercise reasonable care under Rule 14 as a result
21 of failure to provide notice of power failure).

22 27. Here, Rule 14 and the case law reviewing this rule provide that PG&E has a duty of
23 reasonable care to its customers, including UCSF. Claimant has carried its burden of proof to
24 establish a *prima facie* claim against PG&E. *See Tesoro Refining & Marketing Co. LLC v. Pacific*
25 *Gas & Elec. Co.*, 146 F. Supp. 3d 1170, 1187 (N.D. Cal. 2015) (holding that Rule 14 did not shield
26 PG&E for damages caused by its own negligence). Moreover, “the general rule [is] that a limitation
27 of ‘liability for negligence must clearly and explicitly express that purpose,’ as well as the
28 California courts’ instruction to resolve any doubt as to ‘an ambiguity in a tariff [such as Rule 14] ...

1 in favor of the nondrafter and against the utility...”” *Id.*

2 28. Because PG&E’s only known contention is that it is shielded from all liability under
3 Rule 14, UCSF requests that the Court overrule PG&E’s Objection and that the initial hearing on
4 the Response be a status conference.⁴

5 **B. The Reorganized Debtors Are Liable For The Significant And Costly Delays
6 Caused To UCSF’s Block 33 Project Under Tort Or Contract Bases.**

7 29. There are multiple causes of action under which PG&E is liable for significant and
8 costly delays caused by PG&E, including but not limited to, (a) negligence, *see Ewart v. Southern*
9 *Calif. Gas Co.*, 237 Cal. App. 2d 163, 170 (1965) (stating elements for negligence); (b) breach of
10 oral or written contract, *see CACI No. 303* (breach of contract – essential factual elements); and/or
11 (c) interference, *see Pacific Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118, 1126 (1990)
12 (stating elements for interference with contractual relationship).

13 30. Here, UCSF has established a claim for negligence in that PG&E has a duty to
14 exercise reasonable diligence and care, that PG&E has breached its duty, and that PG&E’s
15 negligence caused substantial damages to UCSF. UCSF has also stated a claim for breach of
16 contract in that PG&E promised to exercise reasonable diligence and care in providing permanent
17 power by a date certain, that PG&E breached its promise, whether oral or written, and that PG&E’s
18 breach caused significant damages to UCSF. Further, UCSF has established an interference claim
19 in that PG&E had actual knowledge of UCSF’s contract with Webcor and other contractors, that
20 PG&E interfered with those contracts by unexpectedly changing and delaying its plan to provide a
21 permanent power pathway to the Block 33 Project, and that PG&E’s interference caused
22 considerable harm to UCSF in the amount of more than \$4.5 million.

23 31. Accordingly, there is more than ample grounds to overrule PG&E’s Objection.
24 Moreover, Claimant anticipates that it may likely need to conduct some limited discovery,
25 particularly pertaining to why PG&E decided to belatedly change its planned pathway to provide
26 power to UCSF and where PG&E diverted that power that was previously designated for UCSF, as

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⁴ UCSF reserves the right to respond to any additional contentions made by PG&E to support its
Objection after those contentions are disclosed by PG&E.

1 Claimant's investigation into the facts underlying its Claim is not finished.

2 **IV. REQUEST FOR RELIEF.**

3 32. WHEREFORE, based on the Response and the supporting declaration and exhibits,
4 Claimant respectfully requests that the Court:

- 5 a. Overrule the Objection;
- 6 b. In the alternative, proceed with the hearing on the Response and Objection as
7 a status conference;
- 8 c. Allow sufficient time after the initial status conference hearing for Claimant
9 to conduct focused discovery, including at least document requests and
10 depositions; and
- 11 d. For such other and further relief as the Court deems appropriate and just.
- 12 e. Claimant reserves the right to amend and/or supplement this Response.

13 Respectfully submitted,

14 Dated: September 22, 2021

RIMON, P.C.

15 
16 By: _____
17 Phillip Wang
18 Attorneys for Claimant
THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA